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DOCKETS

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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Supplemental Advance Notice of)
Proposed Rulemaking)
)
Computer Reservation System (CRS))
Regulations)
)
14 C.F.R. Part 255)
)

Docket OST-97-2881 - 170
97-3014 - 39
98-4775 - 84

REPLY COMMENTS OF BRITISH AIRWAYS

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October 23, 2000

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REPLY COMMENTS OF BRITISH AIRWAYS

Although the initial round of comments responding to the SANPRM reflected significant diversity of views, they demonstrated at least one near consensus. A significant majority of commenters -- including representatives from all industry sectors -- agree that the existing CRS rules should not apply to single carrier internet web sites.

There is no justification for subjecting a single carrier web-sites to CRS type regulatory intervention. As described in our initial comments, individual carrier web sites are equivalent to carrier 800 numbers. Consumers accessing a carrier 800 number expect and presumably want to obtain information regarding the proprietor carrier's flights. It is reasonable to assume that consumers accessing an individual carrier web site also primarily seek information regarding that carrier's flights. Regulation of

individual airline web sites would frustrate consumer expectations and would be counter productive.

The initial comments reflected less agreement regarding regulation of other internet distribution vehicles; which British Airways also opposes. When considering whether CRS type regulations are required or appropriate, it is helpful to consider the predicate for the original CRS regulations. The Civil Aeronautics Board imposed those regulations only after it determined that each of the four existing carrier owned CRSs in effect constituted an essential facility for competing carriers and after it determined that each CRS consistently exercised its market power to the detriment of competing carriers.

On each subsequent occasion where the Department has elected to continue to apply the regulations, it cited the continuation of those factual circumstances as a fundamental justification for its decision. For example, during its comprehensive review of the CRS regulations in 1992 the Department concluded that:

CRS rules remain essential because each of the carriers operating the four CRSs may have the power and incentive to use its system to prejudice the competitive position of other carriers in ways that will raise consumer costs and reduce the level of airline service. Because market forces may not effectively prevent such injuries, some regulations are necessary. (75 Red. Reg. 43781, September 22, 1992).

Five years later the Department noted that CRSs continued to

retain the ability to exercise market power:

The large majority of travel agencies use only one CRS... As a result, virtually every airline must make its services available through each of the four CRSs operating in the United States in order to distribute its service through the travel agencies using each system... Because each airline must participate in each system the systems do not compete with each other for airline participants and have long been able to dictate the terms for participation (in contrast, the systems compete for travel agency users). Each of the systems is controlled by one or more airlines or airline affiliates, which can use their market power over air line participants to distort airline competition. (63 Fed. Reg. 59784, November 5, 1997).

The quoted language suggests that the Department, and the CAB before it, would not have promulgated the CRS regulations absent irrefutable evidence documenting the exercise of market power by CRS vendors. There is no basis for subjecting internet distributors to a stricter standard. The record does not support the conclusion that any individual internet distributor even possesses, let alone exercises, market power comparable to that long enjoyed by CRSs. To the contrary, the internet distribution sector is characterized by ease of entry and vigorous competition. Accordingly, there is no basis for subjecting internet distributors to CRS type regulation.

Although the era of internet bookings has just begun, it already has produced significant price and service benefits to consumers. Premature regulation could frustrate this trend and forestall future benefits. It also could help perpetuate the

continuing market power of the CRS industry.

Several commenters cited bias by individual internet distributors as a basis for regulating the entire sector. This is tantamount to citing bias by individual travel agents as a justification for regulating all agents. For a variety of reasons, individual travel agents may steer their clients towards certain carriers. Passengers unhappy with the results have ready access to competing agencies. Under those circumstances, there is no need to regulate the entire industry.

British Airways does not doubt that certain internet distributors will exhibit similar bias. Others will highlight their neutrality. So long as consumers are free to choose among competing business models the free market will prevail and they will be allowed to exercise their own judgment to decide what works best for them.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing comments by first class mail, postage prepaid, upon all persons shown on the attached service list.

A handwritten signature in dark ink, appearing to read "D. Hainbach", is written over a horizontal line.

Don H. Hainbach

October 23, 2000

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